

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re:	X	
	:	Case No. 3:16-bk-02230-PMG
	:	
RMS TITANIC, INC., <i>et al.</i> , <sup>1</sup>	:	Chapter 11 (Jointly Administered)
	:	
Debtors.	:	
	X	

**DEBTORS’ SUPPLEMENTAL APPLICATION FOR ENTRY OF  
AN ORDER AUTHORIZING EMPLOYMENT AND RETENTION  
OF CARR, RIGGS & INGRAM, LLC AS TAX ADVISORS TO THE  
DEBTORS IN POSSESSION NUNC PRO TUNC TO SEPTEMBER 7, 2017**

RMS Titanic, Inc. (“RMST”) and certain of its affiliates, as Debtors and Debtors in possession in the above-captioned case (collectively, the “Debtors”), by and through the undersigned counsel, pursuant to Section 327(a), 328(a) and 1107(b) of title 11 of the United States Code and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure file this supplemental application (the “Supplemental Application”) seeking entry of an order (i) authorizing the Debtors to expand the scope of the Debtors retention and employment of Carr, Riggs & Ingram, LLC (“CRI”) as tax advisors effective *nunc pro tunc* to September 7, 2017 for the sale of all or some combination of a portion of the Debtors’ assets in accordance with the terms and conditions set forth in the engagement letter dated September 7, 2017 (the “Supplemental Engagement Letter”), a copy of which

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<sup>1</sup> The Debtors in the chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: RMS Titanic, Inc. (3162); Premier Exhibitions, Inc. (4922); Premier Exhibitions Management, LLC (3101); Arts and Exhibitions International, LLC (3101); Premier Exhibitions International, LLC (5075); Premier Exhibitions NYC, Inc. (9246); Premier Merchandising, LLC (3867); and Dinosaurs Unearthed Corp. (7309). The Debtors’ service address is 3045 Kingston Court, Suite I, Peachtree Corners, Georgia 30071.

is attached hereto as **Exhibit A**<sup>2</sup> and (ii) authorizing the compensation of CRI for its legal/tax services as set for in the Supplemental Engagement Letter.

The Court previously authorized the Debtors to retain and employ CRI as their tax advisors pursuant to the Court's *Order Approving Debtors' Application for Entry of an Order Authorizing Employment and Retention of Carr, Riggs & Ingram, LLC as Tax Advisors to the Debtors in Possession* [D.E. 604] (the "Retention Order") and on the terms set forth in the Engagement Letters dated March 21, 2017 and March 30, 2017 (the "Approved Engagement Letters"), which are attached as Exhibit C to the Debtors' *Application for Entry of an Order Authorizing Employment and Retention of Carr, Riggs & Ingram, LLC as Tax Advisors to the Debtors in Possession* [D.E. 566] (the "Original Application"). The Approved Engagement Letters, however, do not contemplate that CRI will help the Debtors evaluate possible deal structures and legal/tax considerations from the sale of the Debtors' assets (in whole or in part). The Debtors and CRI, therefore, have entered into the Supplemental Engagement Letter to expand the scope of CRI's engagement to include tax/legal advisement in connection with a potential sale of the Debtors' assets, and to explain the compensation for CRI in exchange for such services. Further, CRI has added Douglas Stein, an attorney, to the advisory team, as requested by the Debtors.

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<sup>2</sup> Any references to, or summaries of, the Supplemental Engagement Letter in this Supplemental Application are qualified by the express terms of the Engagement Letter, which shall govern if there is any conflict between the Supplemental Engagement Letter and such summaries or references herein. Additionally, any capitalized terms used in this Supplemental Application and not otherwise defined herein shall have the means ascribed to them in the Engagement Letter.

In support of this Supplemental Application, the Debtors rely on (i) the Declaration of Chris D. Clayton (the “Original Declaration”), which was attached as Exhibit A to the Original Application, and (ii) the Declaration of Chris D. Clayton (the “Supplemental Declaration”) attached as **Exhibit B** hereto. The Debtors further respectfully state as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 327(a) and 328(a) of Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016.

### **BACKGROUND**

3. On June 14, 2016 (the “Petition Date”), the Debtors initiated this bankruptcy case by filing a joint voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

4. The Debtors continue to operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. No trustee or examiner has been appointed in the Bankruptcy Case.

6. The factual background relating to the Debtors, including its current and historical business operations, and the events precipitating the chapter 11 filing, are set forth in the *Chapter 11 Case Management Summary* (the “Case Summary”), which is incorporated herein by reference.

**The Approved Engagement Letter**

7. On March 21, 2017 and March 30, 2017, the Debtors and CRI executed the Approved Engagement Letters, which the Court authorized and approved through the Retention Order on May 26, 2017.

8. The Approved Engagement Letters contemplate that CRI will prepare certain federal and state tax returns for the Debtors for 2015 and 2016. The Approved Engagement Letters provide that CRI is to be compensated for time billed by CRI in connection with tax services at the hourly rates set forth in the Original Application.

9. The Approved Engagement Letters, however, do not specifically contemplate or provide for tax advisement in connection with a potential sale of all or a portion of the Debtors' assets.

**The Plan Support Agreement**

10. The Debtors and the statutory committees appointed in these Bankruptcy Cases (the "Committees") have entered into and filed a motion to approve that certain Plan Support Agreement (the "PSA") [D.E. 587]. The PSA contemplates, among other things, a sale of substantially all assets of the Debtors that will be implemented through the marketing and sale of (a) the common shares in RMST or the entire artifact collection held by RMST, and (b) the operations of Premier and its subsidiaries in accordance with, and subject to, the terms and conditions contained in the PSA.

11. The PSA provides a timeline for the proposed sale process, which, among other things, sets forth deadlines for the culmination of a marketing and sale process, the designation of one or more stalking horse bidders, and an auction of the Debtors' assets. In

exchange for the Debtors' agreement to pursue such a sale on the timelines agreed upon, both of the Committees have agreed to, among other things, support a plan that is consistent with the PSA.

12. In light of the PSA and the Debtors' commitment to pursue a sale of substantially all of its assets, they have entered into the Supplemental Engagement Letter to engage CRI specifically for tax/legal advice in connection with the contemplated sale of the Debtors' assets.

### **RELIEF REQUESTED**

13. The Debtors seek a supplemental order (i) to authorize the Debtors to expand the scope of the Debtors retention and employment of CRI as tax advisors effective as of the date hereof for the sale of all or some combination of a portion of the Debtors' assets in accordance with the terms and conditions set forth in the Supplemental Engagement Letter and (ii) to authorize the compensation of CRI for its legal/tax services as set for in the Supplemental Engagement Letter. For the avoidance of doubt, the Supplemental Engagement Letter is intended only to supplement the Approved Engagement Letters and shall not modify, cancel, alter or amend the Approved Engagement Letters, Retention Order, or any compensation or fees that may be owed or may become owed to CRI pursuant to the terms thereof.

### **QUALIFICATIONS**

14. As already set forth in the Original Application, CRI has substantial experience in this field as detailed in the Original Declaration, which is incorporated

herein by reference. The Debtors have selected CRI because of its experience and expertise in state and federal tax issues.

15. Since the Debtors engaged CRI as tax advisors, CRI has developed extensive institutional knowledge of the Debtors' business and operations and has provided extensive advisory services to the Debtors in connection with these Bankruptcy Cases, which makes CRI uniquely qualified to act as the Debtors' tax/legal advisor in connection with a sale.

#### **TERMS OF THE SUPPLEMENTAL ENGAGEMENT LETTER**

##### **Services to be Provided**

16. The parties have entered into the Supplemental Engagement Letter, which governs the relationship between the Debtors and CRI. The terms and conditions of the Supplemental Engagement Letter were negotiated between the Debtors and CRI and reflect the parties' mutual agreement as to the services that will be provided pursuant to the Supplemental Engagement Letter. Under the Supplemental Engagement Letter, in consideration for the compensation contemplated thereby, CRI has agreed to help the Debtors evaluate possible deal structures and legal/tax considerations from the sale of the company as it relates to an exit strategy as a result of the Chapter 11 reorganization. Per the Debtors' request, CRI has included an attorney, Douglas Stein, as a member of the advisory team.

17. The services that CRI will provide to the Debtors are necessary to enable the Debtors to maximize the value of their estates. The Debtors believe that the services will not duplicate the services already provided by CRI or other professionals to the Debtors in these Bankruptcy Cases.

**Professional Compensation**

18. In consideration for the services to be provided by CRI, and as more fully described in the Supplemental Engagement Letter, subject to this Court's approval of the Supplemental Application, the Debtors have agreed to pay CRI based upon the amount of time required at CRI's standard billing rates, plus out-of-pocket expenses, as set forth in the Supplemental Engagement Letter (the "Fee Structure").

19. The hourly billing rates of the professionals selected to assist in this engagement are as follows:

- |     |                  |            |
|-----|------------------|------------|
| (a) | Chris Clayton    | \$360/hour |
| (b) | Kristin Peniston | \$150/hour |
| (c) | Douglas Stein    | \$450/hour |

**The Fee Structure Is Appropriate and Should be Approved under Section 328(a) of the Bankruptcy Code.**

20. The Debtors believe that the Fee Structure is comparable to those fees generally charged by tax of similar stature to CRI for comparable engagements, both in and out of bankruptcy proceedings.

21. The Fee Structure is consistent with CRI's normal and customary billing practices for comparably sized and complex cases, both in and out of court, involving the services to be provided in these Bankruptcy Cases. The Fee Structure is consistent with

and typical of arrangements entered into by CRI and other tax/legal advisors of comparable standing in connection with the rendering of similar services to clients such as the Debtors. CRI and the Debtors believe that the Fee Structure is market-based and reasonable in light of the facts and circumstances, and uncertainties, known and capable of being known.

### **BASIS FOR RELIEF**

22. Under Section 327(a) of the Bankruptcy Code, a debtor in possession is authorized to employ professional persons “that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor in possession] in carrying out [its] duties under this title.” 11 U.S.C. § 327(a). Such employment may be based “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a).

### **CRI’s Disinterestedness**

23. CRI asserts that to the best of its knowledge, information and belief, at the time of the filing of this Application, CRI does not represent or hold any interest adverse to the Debtors with respect to matters on which CRI is to be employed and will disclose any conflicts that may arise in the future or of which it becomes aware and will not represent any party with interests adverse to the Debtors with regard to the matters on which it is to be retained.

24. CRI has not received or been promised any compensation for services rendered or to be rendered in any capacity in connection with the Debtors' Chapter 11 Cases, other than as permitted by the Bankruptcy Code, nor has CRI agreed to share compensation received in connection with the Debtors' Chapter 11 Cases with any other person.

25. During the pendency of these Bankruptcy Cases, CRI has received compensation from the Debtors as compensation for professional services performed, and received reimbursement of reasonable and necessary expenses incurred. Further, as of the filing of this Supplemental Application, CRI is owed \$13,028.35 for services rendered and expenses incurred in connection with the Approved Engagement Letters, and is owed \$14,100.56 for services rendered and expenses incurred in connection with this Supplemental Application. The Debtors, however, do not believe that these amounts create an interest adverse to them and anticipate paying all amounts owed to CRI prior to or soon after approval of this Supplemental Application.

26. Under the circumstances, the Debtors submit that retention of CRI to serve as tax advisors under the proposed compensation structure is warranted and is in the best interest of the Debtors' estate.

### **NOTICE**

27. Notice of this Motion has been provided to (i) the Office of the United States Trustee for the Middle District of Florida; (ii) counsel for the Official Committee of Unsecured Creditors, (iii) counsel for the Official Committee of Equity Security

Holders of Premier Exhibitions, Inc.; and (iv) all other persons requesting notices. The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors respectfully request that this Court enter an order substantially in the form attached hereto as **Exhibit C** (i) granting the relief sought herein and (ii) granting such other and further relief as the Court may deem proper.

NELSON MULLINS RILEY  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF on October 26, 2017. I also certify that the foregoing document is being served this day on the following counsel of record via transmission of Electronic Filing generated by CM/ECF:

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